

### **REMARKS**

No claims have been amended. No new claims have been added. Claims 1-27, 37, 40 and 43 were earlier cancelled. Claims 28-36, 38, 39, 41, 42 and 44 are pending.

#### ***Claim Rejections - 35 USC § 103***

The Office Action rejected claims 36-37, 39-40 and 42-44 under 35 USC § 103(a) as obvious from Tuomenoksa (US7181542) in view of Ahlard (US7461157) and examiner's official notice. This rejection is respectfully traversed.

As claims 28-36, 38, 39, 41, 42 and 44 are pending, it appears that this rejection is directed to claims 36, 38, 39, 41, 42 and 44. **Confirmation of the statement of applicability of this rejection is hereby requested.**

The Office Action rejected claims 28-35 under 35 USC § 103(a) as obvious from Tuomenoksa in view of Ahlard in further view of Aysan (US7,379,465), Acharya (US6,894,999) and examiner's official notice. This rejection is respectfully traversed.

In each of these rejection, without more, the Examiner asserts that Official Notice is taken under MPEP 2144.03 that "a network card can programmed to perform the functions as described in claim 42, instead of just emulating a network card as disclosed in Tuomenoksa." However this notice is provided for both of the above statements of rejection, both the statement of rejection that includes claim 42 and the statement of rejection that does not include claim 42. In addition, we cannot readily perceive which functions the examiner is referring to. As such, it is unclear to what claimed features and, even more importantly, to what claims this statement of notice applies. Clarification is hereby requested.

Moreover, MPEP 2144.03 states that "Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being

well-known.” If the Official Notice is that chips can be programmed, then that is fine. However, if notice of more detailed functionality is to be taken, we request that further details be stated clearly and that references to commonly known sources for the official notice be provided. As such, **we request that a new non-final Office Action issue providing the requested clarification and information.**

The independent claims, namely claims 28, 32, 36, 39 and 42, recite a network testing system or network card that performs the following or similar actions.

providing the client computing device access to capabilities of the network device of the network card in the network testing system via the network interface, including: ...

transmitting outgoing data units pursuant to the outgoing data unit requests onto a/the second network via the (specified) network interface at a speed greater than that available at the client computing device and/or using a protocol not supported by the client computing device and/or at a throughput not possible at the client computing device

It is wholly unclear from the rejection which cited references are asserted as disclosing these limitations. Clarification is requested. As such, **we request that a new non-final Office Action issue providing the requested clarification.**

Specifically, it is unclear which reference and where in that reference the Examiner is asserting that providing the client computing device access to capabilities of the network device of the network card in the network testing system via the network interface as claimed is disclosed.

If the statement that “It would have been obvious to one skilled in the art at the time the invention was made to use Ahlhard’s teaching of allowing the client to communicate directly with the tunnel destination to simplify the process of creating the secure tunnel in Tuomenoksa” is asserted as disclosing providing the client computing device access to capabilities of the network device of the network card in the network testing system via the network interface as claimed, then this is not enough. Mere communication between two devices over a tunnel is not what is

claimed; but that is what the Examiner cites Ahlard as teaching. There is a lot more to what is claimed. If Ahlard is cited as disclosing this, it is not enough.

More specifically, it is unclear which reference and where in that reference the Examiner is asserting that transmitting outgoing data units pursuant to the outgoing data unit requests onto a/the second network via the (specified) network interface at a speed greater than that available at the client computing device is disclosed. It is unclear which reference and where in that reference the Examiner is asserting that transmitting outgoing data units pursuant to the outgoing data unit requests onto a/the second network via the (specified) network interface using a protocol not supported by the client computing device is disclosed. It is unclear which reference and where in that reference the Examiner is asserting that transmitting outgoing data units pursuant to the outgoing data unit requests onto a/the second network via the (specified) network interface at a throughput not possible at the client computing device is disclosed.

The rejection merely states that “It would have been obvious to one of ordinary skill in the art at the time to implement Tuomenoksa’s emulated card in hardware to provide speedier dedicated hardware support for those functions.” It is not clear to which functions the Examiner is referring. Further, this statement appears irrelevant to the claimed limitations. Specifically, this statement appears to assert that implementing functions in hardware makes them run faster than when run as software. This does not seem pertinent. Again, clarification is requested.

**In view of the above, we request that a new non-final Office Action issue providing the requested clarification.**

We assert that none of the cited references taken alone or together in various combinations disclose the entirety of the claimed subject matter.

In view of the above, we assert that the independent claims, namely claims 28, 32, 36, 39 and 42, and all claims depending thereon, are patentable over the cited references.

***Disclaimers Relating to Claim Interpretation and Prosecution History Estoppel***

The claims of this application are intended to stand on their own and are not to be read in light of the prosecution history of any related or unrelated patent or patent application. Furthermore, no arguments in any prosecution history relate to any claim in this application, except for arguments specifically directed to the claim.

***Additional Statements***

The Examiner's consideration of the references of record is appreciated. It is presumed that the Examiner has considered the entire disclosure of each of the references of record with respect to anticipation (individually) and obviousness (in any combination).

References to "Applicant" herein are to the assignee of record, which the undersigned represents. An assignment has been recorded, and a Statement of Ownership and General Power of Attorney have also been filed. Thus, the rights of the original Applicants/inventors have been excluded.

With respect to this filing, the Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. 503456. Please consider this response to be a petition for extension of time, if necessary.

*Conclusion*

It is submitted, however, that the independent and dependent claims include other significant and substantial recitations which are not disclosed in the cited references. Thus, the claims are also patentable for additional reasons. However, for economy the additional grounds for patentability are not set forth here.

In view of all of the above, it is respectfully submitted that the present application is now in condition for allowance. Reconsideration and reexamination are respectfully requested and allowance at an early date is solicited.

The Examiner is invited to call the undersigned registered practitioner to answer any questions or to discuss steps necessary for placing the application in condition for allowance.

Respectfully submitted,



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